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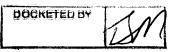
BOB STUMP - Chairman **GARY PIERCE**

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IN THE MATTER OF THE APPLICATION OF DII-EMERALD SPRINGS, L.L.C. FOR A

CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER

8 SERVICES.

> IN THE MATTER OF THE APPLICATION OF DII-EMERALD SPRINGS, L.L.C. FOR

APPROVAL OF RATES. 10

> IN THE MATTER OF THE APPLICATION OF DOYLE THOMPSON FOR APPROVAL

OF A CERTIFICATE OF CONVENIENCE 12 AND NECESSITY TO PROVIDE SEWER SERVICES. 13

DOCKET NO. WS-20794A-11-0140

DOCKET NO. WS-20794A-11-0279

DOCKET NO. SW-20851A-12-0226

PROCEDURAL ORDER

BY THE COMMISSION:

On April 4 and July 15, 2011, DII-Emerald Springs, L.L.C. ("DII") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service, in Docket No. WS-20794A-11-0140, and a rate application, in Docket No. WS-20794A-11-0279 (collectively "DII Dockets"). The requested CC&N service area includes a subdivision known as Emerald Springs, and DII considered the Emerald Springs Homeowners' Association ("HOA") to be DII's only customer at the time of DII's applications. The Commission's Utilities Division ("Staff") found DII's CC&N and rate applications to be sufficient in August 2011, and the DII Dockets were consolidated through a Procedural Order issued on September 15, 2011. The time clock for the DII Dockets was suspended indefinitely by a Procedural Order issued on November 21, 2011. Since that time, the hearing has been scheduled and rescheduled, public comment sessions and procedural conferences have been held, and intervention has been granted to the HOA; Robhana, Inc. and Charles Dunn Capital, Inc. (collectively referred to as "Robhana"); and Doyle Thompson.² In addition, the parties

27 DII would bill the HOA, which would then bill the HOA members.

Robhana asserts that it owns the land on which DII's sewer plant sits. The interventions of Robhana and Mr. Thompson were granted at procedural conferences held on March 20, 2012, and April 10, 2012, respectively.

have indicated that the HOA has disconnected from DII's wastewater treatment plant ("WWTP") and connected to Mr. Thompson's WWTP for what was originally described by the HOA as a test period, although the HOA has expressed an intention never to terminate that test period.

On June 7, 2012, in Docket No. SW-20851A-12-0226 ("Thompson Docket"), Mr. Thompson filed an application for a CC&N to provide wastewater service to the area including Emerald Springs and the HOA.

The DII Dockets and the Thompson Docket were consolidated by a Procedural Order issued on July 31, 2012, which also denied an HOA Motion to Dismiss DII's applications.

On October 16, 2012, Staff issued a letter to Mr. Thompson including several additional insufficiency items.

On October 29, 2012, a Procedural Order was issued denying a DII Motion to Dismiss Mr. Thompson's application, which Motion had been opposed by both Staff and the HOA.

On November 27, 2012, Mr. Thompson filed information in response to Staff's Insufficiency Letter and Staff's letter with additional insufficiency items.

On January 8, 2013, Staff issued a Sufficiency Letter stating that Mr. Thompson's CC&N application has met the minimum sufficiency requirements of A.A.C. R14-2-602.

As has been stated in prior Procedural Orders, the Commission's most appropriate course of action when presented with competing applications for a CC&N is to consider the competing applications in one proceeding, compare the qualifications of the two applicants, determine which applicant's services will best satisfy the public interest, and grant the CC&N to that applicant. Because Mr. Thompson's CC&N application has been found sufficient, it is now appropriate to establish the procedural schedule and requirements for this consolidated matter, in which the merits of the DII applications and the Thompson application shall be addressed.

IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall commence on **April 2, 2013,** at **10:00 a.m.**, or as soon thereafter as is practicable, in Hearing Room No. 1 at the Commission's offices, 1200 West Washington, Arizona 85007, and **shall continue at 9:00 a.m. on April 3, 2013,** if necessary.

IT IS FURTHER ORDERED that Mr. Thompson³ shall ensure that public notice of the

hearing in this matter is provided, in the following form and style, with the heading in no less than

12-point bold type and the body in no less than 10-point regular type:

IN THE MATTER OF THE APPLICATIONS OF DII-EMERALD SPRINGS, L.L.C. AND DOYLE THOMPSON FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AND APPROVAL OF RATES TO PROVIDE SEWER SERVICE TO AN AREA IN LA PAZ COUNTY INCLUDING THE EMERALD SPRINGS SUBDIVISION. (DOCKET NOS. WS-20794A-11-0140 ET AL.)

Summary

On April 4, 2011, DII-Emerald Springs, L.L.C. ("DII") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide sewer service to a CC&N service area including a subdivision in Ehrenberg known as Emerald Springs. At the time, DII considered the Emerald Springs Homeowners' Association ("HOA") to be DII's only customer, as the HOA would be billed for service and would then bill its members. On July 15, 2011, DII filed a rate application for the same service area, to which DII had been providing sewer service since 2004. In September 2011, DII's CC&N and rate applications were consolidated to proceed as one matter.

In March 2012, the HOA, through its own actions, ceased receiving sewer service from DII and began receiving sewer service from Doyle Thompson, who was already providing sewer service to Copper State Mobile Home and RV Park, for which he is identified as the owner.

In March 2012, intervention in the DII matters was granted to the HOA and jointly to Robhana, Inc. and Charles Dunn Capital, Inc. In April 2012, intervention in the DII matters was granted to Mr. Thompson, who indicated that he soon would be filing an application for a CC&N to provide sewer service.

On June 7, 2012, Mr. Thompson filed an application for a CC&N to provide sewer service to a CC&N service area including Emerald Springs. The HOA has expressed support for Mr. Thompson's CC&N application.

In July 2012, the dockets for Mr. Thompson's application and DII's applications were consolidated, to allow the Commission to consider and resolve the competing applications and rate proposals through a single proceeding.

DII has proposed that the HOA be charged a flat monthly rate to cover service to all of its members. DII has not proposed a specific rate, but was charging the HOA a monthly rate of \$3,041.18 at the time service was disconnected. In a December 2011 Staff Report, the Commission's Utilities Division ("Staff") recommended that DII be granted a CC&N and authorized to charge a monthly rate of \$125.80 per completed residential connection (of which there were then 43, per the Staff Report).

Mr. Thompson has reported that he is currently charging the HOA \$50.00 per residential connection, for a total of \$2,000 per month (40 residential connections within 52 existing lots in Emerald Springs). Mr. Thompson has proposed that he be authorized to charge the following rates: \$75.00 per on-site built home, \$30.00 per mobile home space, and \$15.00 per RV space.

Staff is now in the process of auditing and analyzing all three applications and will be making recommendations regarding the disposition of each CC&N application and rate

³ DII has previously provided notice of hearings scheduled for its applications in this matter.

proposal. The Commission is not bound by the proposals made by DII, Mr. Thompson, Staff, or any intervenors. The rates approved by the Commission will not necessarily be the rates proposed by any party to this proceeding, including Staff, and may be higher or lower than the rates proposed. The Commission will issue a Decision regarding the applications following consideration of testimony and evidence presented at an evidentiary hearing.

How You Can View or Obtain a Copy of the Applications

Copies of the applications and other documents filed in these consolidated matters are available for inspection during regular business hours at the Commission's Docket Control Center at 1200 West Washington Street, Phoenix, AZ 85007, and at any time on the Internet via the Commission's website (www.azcc.gov) using the e-Docket function, located at the bottom of the webpage. Copies of DII's applications are also available from DII at 212 East Rowland Street #423, Covina, CA 91723. Copies of Mr. Thompson's application are also available from Mr. Thompson at [INSERT HOW AND WHERE AVAILABLE].

Public Hearing Information

The Commission will hold a hearing on this matter beginning April 2, 2013, at 10:00 a.m., in Hearing Room No. 1, at the Commission's offices at 1200 West Washington Street, Phoenix, AZ 85007. Public comments will be taken on the first day of hearing. Written public comments may be submitted at any time by mailing a letter, referencing Docket Nos. WS-20794A-11-0140 et al., to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000.

About Intervention

Any person entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. The granting of intervention entitles a person to participate as a party at hearing by presenting sworn evidence and cross-examining other party's witnesses. If you wish to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission's Docket Control Center no later than March 15, 2013, and send a copy of the motion to all parties of record or their counsel. Contact information may be obtained using the Commission's e-Docket function.

Your motion to intervene must contain the following:

- 1. Your name, address, and telephone number, and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
- 2. A short statement of your interest in the proceeding (e.g., a customer of either applicant, a property owner in the proposed CC&N service area, etc.); and
- 3. A statement certifying that you have mailed a copy of the motion to intervene to all parties of record in the case or to their counsel.

The granting of motions to intervene is governed by A.A.C. R14-3-105, except that <u>all</u> motions to intervene must be filed on or before March 15, 2013.

If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. A sample intervention request form is available on the Commission's website at http://www.azcc.gov/divisions/utilities/forms/interven.pdf.

If you do not intervene, you will receive no further notice of the proceedings in this docket. **However, all documents filed in this docket are available online** (usually within 24 hours after docketing) at the Commission's website, www.azcc.gov, using the e-Docket function, located at the bottom of the webpage. RSS feeds are also available through e-Docket.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Shaylin Bernal, E-mail SAbernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Mr. Thompson shall mail a copy of the above notice to each property owner in the proposed CC&N service area and shall cause the above notice to be published at least once in a newspaper of general circulation in the proposed CC&N service area, with publication and mailing to be completed no later than February 22, 2013.

IT IS FURTHER ORDERED that Mr. Thompson shall file certification of mailing and publication as soon as practicable after mailing/publication has been completed, but no later than March 8, 2013.

IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication, notwithstanding the failure of an individual to read or receive the notice.

IT IS FURTHER ORDERED that the **consolidated Staff Report** and any associated exhibits to be presented at hearing by Staff shall be reduced to writing and filed on or before **March 1, 2013**. The **consolidated Staff Report shall** address and make recommendations regarding Commission action as to each applicant's CC&N application and each applicant's rate proposal, and shall include Staff's determinations as to which applicant is better qualified to provide service in the requested CC&N service area, which applicant's services would best satisfy the public interest, and what initial rates should be charged.

IT IS FURTHER ORDERED that any objections to the consolidated Staff Report shall be reduced to writing and filed on or before March 15, 2013.

IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **March 15, 2013**.

IT IS FURTHER ORDERED that any objections to any Motions to Intervene shall be filed on or before March 22, 2013.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's

Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or Commission.

IT IS FURTHER ORDERED that any motion, other than a Motion to Intervene, that is filed in this matter and that is not ruled upon within 20 calendar days of the filing date of the motion shall be deemed denied.

IT IS FURTHER ORDERED that any response to a motion shall be filed within five calendar days of the filing date of the motion.

IT IS FURTHER ORDERED that any reply shall be filed within five calendar days of the filing date of the response.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

ADMINISTRATIVE LAW JUDGE

DATED this /OH day of January, 2013.

Copies of the foregoing mailed/delivered this 10-2 day of January, 2013, to:

Henry Melendez
DII-EMERALD SPRINGS, LLC
212 East Rowland Street, No. 423
Covina, CA 91723-3146

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5	1850 North Central Avenue, Suite 1100 Phoenix, AZ 85004
6	Attorney for Robhana, Inc. and Charles Dunn Capital, Inc.
7	Doyle R. Thompson COPPER STATE GAME CLUB, R.V. AND MOBILE HOME PARK P.O. Box 287
8	Ehrenberg, AZ 85334
9	Janice Alward, Chief Counsel Legal Division
10	ARIZONA CORPORATION COMMISSION 1200 West Washington Street
11	Phoenix, AZ 85007
12	Steven M. Olea, Director Utilities Division
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16	Phoenix, AZ 85004-1481
17	By: Atryles
18	Debra Broyles/ Secretary to Sarah N. Harpring
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